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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,743	10/27/2000	Kevin Bowen	99-26	6821

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EXAMINER

DAWSON, GLENN K

ART UNIT PAPER NUMBER

3761

DATE MAILED: 08/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/698,743

Applicant(s)

BOWEN ET AL.

Examiner

Glenn K Dawson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-24, 26-33, 35, 36, 38-44 and 46-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23, 24, 26, 29, 30, 41, 42, 46 and 50 is/are allowed.
- 6) ☒ Claim(s) 6-19, 21, 22, 27, 31-33, 36, 39, 40, 43, 44 and 47-49 is/are rejected.
- 7) ☒ Claim(s) 20, 28, 35 and 38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 43 is rejected under 35 U.S.C. 102(e) as being anticipated by Aylsworth, et al.-5890490.

Aylsworth discloses a pressure generating system for delivering breathing gas to a patient, a controller that can be preprogrammed with a patient's prescriptions to deliver gas to the patient according to the specifications of a health care practitioner. Data can be sent back and forth from the control module via modem. See col. 5 lines 12-16 and 40-54; col. 7 lines 27-29 and 61-65; col. 10 lines 59-67; col. 11 lines 1-3 and 39-41; col. 12 lines 14-18.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6-19,21,22,27,31-33,36,39,40,44 and 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willemot, et al.-'353.

Willemot discloses a pressure support device having a slot for receiving a memory card and patient and operating information encoded thereon. A readout displays the number of doses of medication received. Information is written from the device to the card which is then taken to a reading station to be reviewed by a healthcare practitioner. However, it is not specifically disclosed that the card has information about itself. The examiner considers it obvious to place on the card a label

of how much data can be stored on the card so that a user knows if a particular patient data will be able to fit on the particular card. The examiner also contends that any memory card will have info. encoded on it with regard to the type of formatting the disk received and any potential defective areas on the disk which cannot be written to.

With regard to the claims involving the prompting the user to remove the card responsive to a predetermined condition, the predetermined condition could merely be that all the data has been written to the card. In each floppy drive there is a status busy indicator which indicates when any particular writing procedure has been completed by turning itself off. After the busy led goes out, the user knows (is prompted) to remove the card.

Willemot also discloses that the device could be used to control CPAP see col. 3 lines 47-59. Since the card is capable of controlling the medicament delivery device, it certainly would have been obvious to have modified the card to be able to control other types of medical devices, such as the ventilator which is to be used in conjunction with the disclosed medicament delivery device as well, to have a more centralized control for the total system whereby two or more controllers is unnecessary. Obviously both operating mode and operating parameters would be needed to be encoded on the card to properly control both the medicament delivery device as well as the gas delivery device.

Allowable Subject Matter

Claims 23,24,26,29,30,41,42,46 and 50 are allowed.

Claims 20,28,35 and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 05-29-03 have been fully considered but they are not persuasive.

As outlined above the memory card will have data about itself both on the outside to readily relay storage capacity to the user, and encoded info. regarding the specifics of the free space remaining, the type of formatting and the error zones of the disk.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K Dawson whose telephone number is 703-308-4304. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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Glenn K Dawson
Primary Examiner
Art Unit 3761

gkd
August 11, 2003